

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ORION CUFFE

Plaintiff,

v.

WACHOVIA MORTGAGE
CORPORATION; et al.,

Defendants.

3:11-cv-0525-LRH-WGC

ORDER

Before the court is plaintiff Orion Cuffe's ("Cuffe") motion for a preliminary injunction.
Doc. #23.¹

I. Facts and Background

On September 12, 2007, Cuffe purchased real property through a mortgage note and deed of trust executed by non-party World Savings Bank ("WSB"). Cuffe defaulted on the loan and defendants initiated non-judicial foreclosure proceedings. During the foreclosure process Cuffe allegedly entered into a loan modification program with defendant Wachovia Mortgage Corporation ("Wachovia"). However, during that process defendants allegedly continued with the foreclosure proceedings.

Subsequently, Cuffe filed a complaint against defendants alleging a single cause of action

¹ Refers to the court's docket number.

1 for violation of Nevada's Unfair and Deceptive Trade Practices Act, NRS 598 et seq. Doc. #1,
2 Exhibit B. Along with his complaint, Cuffe filed the present motion for a preliminary injunction.
3 Doc. #23.

4 **II. Discussion**

5 A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear
6 showing that the plaintiff is entitled to such relief." *Id.* (citing *Mazurek v. Armstrong*, 520 U.S. 968,
7 972 (1997) (per curiam)). A court may only grant a preliminary injunction upon a showing that:
8 (1) the petitioner is likely to succeed on the merits of his complaint; (2) irreparable harm will result
9 in the absence of an injunction; (3) the balance of equities favors an injunction; and (4) an
10 injunction is in the public's interest. *Winters v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376
11 (2008) (citations omitted); *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir.
12 2010).

13 Here, Cuffe contends that he is entitled to a preliminary injunction stopping the pending
14 foreclosure because defendants violated NRS 598 by not being true beneficiaries under the original
15 deed of trust. *See* Doc. #23. Specifically, Cuffe argues that Wachovia cannot foreclose on the
16 property because it has not produced an assignment of the original deed of trust and that he is in the
17 process of receiving a loan modification.

18 The court has reviewed the documents and pleadings on file in this matter and finds that
19 Cuffe's motion for a preliminary injunction is without merit. First, Cuffe has failed to establish that
20 he is likely to succeed on his claim for violation of NRS 598. In the complaint, Cuffe only makes
21 conclusory allegations concerning defendants' activities without identifying which sections of
22 NRS 598 defendants have violated or how they violated those sections. Second, Wachovia is the
23 successor in interest to WSB, not an assignee, and thus maintains the same interest WSB held in
24 the original note including the right to initiate non-judicial foreclosure proceedings. Doc. #11,
25 Exhibit 2. Finally, as to Cuffe's claim that Wachovia is continuing with the non-judicial foreclosure
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1 even though he is a loan modification program, the court finds that Cuffe has failed to show the
2 existence of a binding loan modification or that Wachovia made representations that it would
3 forestall the foreclosure while he was in the loan modification process. Therefore, the court finds
4 that Cuffe is not likely to succeed on the merits of his complaint and shall deny his motion for a
5 preliminary injunction accordingly.

6
7 IT IS THEREFORE ORDERED that plaintiff's motion for a preliminary injunction
8 (Doc. #23) is DENIED.

9 IT IS SO ORDERED.

10 DATED this 31st day of October, 2011.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE